

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:WR:SCA:SDGL-812625-98  
JJPosedel

date: MAR 31 1999

to: Chief, Special Procedures Branch, Southern California District  
Attn: Chuck Rosen

from: Associate District Counsel, Southern California District, San Diego

subject: [REDACTED]

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This advice is not binding and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

[REDACTED] are husband and wife. They are also physicians. They accumulated substantial income tax liabilities for the years [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], most of which were assessed on [REDACTED] (all but those liabilities for [REDACTED] and [REDACTED] which were assessed on [REDACTED] and [REDACTED]).

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respectively). Notices of federal tax lien were filed as follows:

	<u>Period</u>	<u>23c date</u>	<u>NFTL Filed</u>	<u>Refile Date per NFTL</u>
(1)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
(2)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
(3)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

November 5, 1990 was the effective date of the amendment to the Internal Revenue Code extending the statute of limitations for collection from 6 to 10 years. We understand that the Service undertook a project to correct the refile dates on the filed notices of tax lien so as to reflect the change in the law. The notice of lien that was refiled on [REDACTED] (#3, above) was not corrected to show the proper refiling date. Under I.R.C. § 6323(g)(3)(B), the date in column (e) of that notice of lien should have been [REDACTED].

The taxpayers filed a Chapter 7 petition on [REDACTED]. They received their discharge on [REDACTED]. Inasmuch as the case was designated as a "no asset" case, the Service filed no proof of claim. All of the tax liabilities referred to above were discharged. At the time of the filing of their Chapter 7 petition, the taxpayers owned several parcels of real property including their home, a [REDACTED], and a [REDACTED]. The [REDACTED] and the [REDACTED] have been foreclosed upon, but the taxpayers retain their home which has a fair market value of between \$[REDACTED] and \$[REDACTED]. The house is subject to a first and second deed of trust, both of which were recorded before any notice of federal tax lien was filed. The initial indebtedness on these trust deeds aggregated \$[REDACTED]; the present outstanding balances are unknown. Outstanding balances remain on all of the periods reflected in the filed notices of federal tax lien except for [REDACTED] (statute of limitations for collection has expired) and [REDACTED] (liability fully paid).

Your inquiry is two-fold: (1) in view of the Service's failure to correct the refiling dates in the notice of lien filed [REDACTED], would that notice of lien have been valid as against any challenges to it under Bankruptcy Code §§ 522(c)(2)(B) and 545(2)?; and, (2) is that lien or any lien valid now so as to allow

the Service to exercise its rights under In re Isom, 901 F.2d 744 (9<sup>th</sup> Cir. 1990)?

When the notice of lien originally filed on [REDACTED] was refiled on [REDACTED], it reflected a refile date in column (e) of the form of [REDACTED]. The [REDACTED] notice of lien was not refiled by [REDACTED] nor has it ever been refiled. Further, there was no revocation of release filed in accordance with I.R.C. § 6325(f)(2). The notice of lien form, which has been in use since 1982, contains the following language: "IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of lien is refiled by the date given in column (e) [last day for refiling], this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a)." I.R.C. § 6325(f)(1)(A) provides that a certificate of release "shall be conclusive that the lien referred to in such certificate is extinguished." Thus, the liens are self-releasing. This particular notice of lien, then, would, after [REDACTED], no longer be effective. Not only is the notice of lien ineffective; it is the Service's position that the federal tax lien no longer exists when the refiling date is missed and no certificate of revocation of release is issued. Because there is no lien, discussing the lien's interface with Bankruptcy Code §§ 522(c)(2)(B) and 545(2) is rendered unnecessary.

Therefore, when the taxpayers filed their Chapter 7 petition in [REDACTED], the assessment liens which had been evidenced by the notice of lien refiled on [REDACTED]--the [REDACTED], [REDACTED], and [REDACTED] income tax liens--no longer existed. There are no Isom rights whatever with respect to these periods. Isom rights are asserted against property which belonged to the debtors (and in which they have equity) at the time they filed their bankruptcy petition when a notice of lien evidencing the discharged tax liability was properly on file as of the filing of the petition. This particular notice of lien (#3 in the chart on the previous page) was no longer effective and the assessment liens underlying the periods set forth on the notice of lien no longer existed when the notice of lien was not refiled within the required refiling period. Nor would the revocation of the release of the self-releasing lien at this point accomplish the desired result. Because any such reinstated lien is effective, under I.R.C. § 6325(f)(2), as of the date the notice of revocation is mailed to the taxpayer, the lien would not be operative retroactively so as to give the Service Isom rights it did not have as of the date of the filing of the bankruptcy petition. Further, revoking the release now would likely be viewed as a violation of the discharge injunction of Bankruptcy Code § 524(a).

There is a period, however, for which a validly filed notice

of federal tax lien was in effect as of the petition date--[REDACTED]. Unfortunately, the amount of this liability is quite small--possibly less than \$[REDACTED] even with accruals. Although the tax liability for [REDACTED] was discharged, the Service continues to retain its Isom rights, which rights can be asserted as against any property in which the taxpayers had equity as of the time of filing of their Chapter 7 petition. Further, although we have found no case law directly on point, we can see no reason why the period of limitations for collection with respect to a discharged tax liability should not be tolled under I.R.C. § 6503(h)(2) when Isom rights attach to that liability. Under the principles of I.R.C. § 6503(h)(2), we believe the statute of limitations for collection was tolled from [REDACTED] to [REDACTED] and for [REDACTED] thereafter. If our calculation is correct, the period of limitations for collection of the [REDACTED] liability has been extended for [REDACTED] days + [REDACTED] months, or until [REDACTED].

Please address any questions of James Posedel of this office.

VALERIE K. LIU  
Associate District Counsel

By: \_\_\_\_\_

/s/

JAMES J. POSEDEL  
Attorney

cc: Assistant Regional Counsel (GL), Western Region ✓